

TELECOMMUNICATIONS SERVICE AGREEMENT

This Telecommunications Service Agreement (the "Agreement") is entered into as of this 11th day of May, 2017 (the "Effective Date"), by and between MNW Telecom, Inc. ("MNW"), an Indiana company organized under the laws of the State of Indiana, with its principal place of business located at 4561 Pine Creek Road Elkhart, IN 46516, and St. Joseph County Public Library, ("SJPL"), with its principal place of business located 304 South Main St, South Bend, IN 46601 for a 48 month period with all sites ending on 06/30/2021. This Agreement sets forth the terms and conditions under which MNW will deploy and provide certain telecommunications and related services described herein (the "Services") for SJPL. MNW and SJPL may be individually referred to herein as "party" or collectively as "parties."

DEFINITIONS

"Certification" shall mean the verification by MNW, as acknowledged by SJPL, that the Services meet the performance requirements set forth in Attachment A.

"Deficient Minutes" shall be the total number of minutes in a calendar month that are in excess of the number of minutes of path non-availability permitted by the Service Level Standards that MNW is required to meet under the terms of this Agreement.

"Deficiency Credit" shall mean a credit against the monthly charges for minutes of outage experienced in a month as outlined in the table below:

Length of Service Outage (in hrs:mins:secs)	Credit for Service
0:00:01 - 4:00:00	0%
4:00:01 - 8:00:00	10%
8:00:01 - 16:00:00	50%
16:00:01 or greater	100%

"E-Rate" shall mean the SJPLs and Libraries Program of the federal Universal Service Fund administered by USAC that makes discounts available to eligible SJPLs and libraries for telecommunications services, Internet access, and internal connections.

"Backbone Equipment" shall mean the MNW-owned service and related equipment deployed and maintained by MNW and used in the provision of the Services to SJPL.

"SJPL Equipment" shall mean the SJPL owned equipment which may be used by MNW to provide services to SJPL.

"Service Locations" shall mean the location(s) specified in Attachment A at which Equipment is deployed.

"Non Recurring Charge" shall mean that portion of the total charge for the provision of the Services under this Agreement that is designated as the non-recurring charge listed on Attachment A for the use of the Equipment.

"Monthly Service Fee" shall mean the monthly service charge listed on Attachment A.

"Outage Event" shall mean any outage or other loss of the Services, other than any outage that (i) is not reported by SJPL to MNW within five (5) days of occurrence, (ii) is less than one (1) hour in duration, (iii) is attributable to MNW's scheduled network maintenance, (iv) is attributable to failure or outage of related telephone circuits (whether ordered by MNW or SJPL), (v) results from SJPL's applications, equipment or facilities, (vi) results from any act or omission of SJPL or any user of SJPL's equipment or account, or (vii) is due to or occasioned by any riots, wars, acts of enemies, national emergency, acts of vandalism, strikes, floods, fires, hurricanes, tornados, acts of God, or by any other cause not within the control of MNW that by the exercise of reasonable diligence MNW is unable to prevent, (viii) results from MNW not having been granted site access by the SJPL, or (ix) results from SJPL'S unauthorized use of equipment or the Services.

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"Site Access" shall mean twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") access to SJPL premise(s) provided to MNW for routine or emergency maintenance of the MNW network.

"Service Window" shall mean twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365").

"USAC" shall mean the Universal Service Administrative Company or any entity which in the future may be designated by the Federal Communications Commission ("FCC") to administer the federal Universal Service Fund program.

TERMS AND CONDITIONS


1. The Service, Deployment and Access.

- (a) The Services. Subject to and in accordance with the terms and conditions of this Agreement, MNW shall provide to SJPL at mutually-agreeable SJPL's designated locations the Services as defined in Attachment A, attached hereto and incorporated herein as part of the Agreement.
- (b) Deployment. MNW and SJPL will work together to deploy the services.
- (c) Governmental Approval. MNW shall use all commercially reasonable efforts to procure, process, or to receive any governmental licenses, permits, consents or approvals necessary for the deployment of the Equipment. All work hereunder shall be performed by an appropriately trained contractor. Service provisioned to specific locations requiring communication towers are contingent upon governmental zoning approval.
- (d) Changes in Deployment. Attachment A includes network design that MNW has determined is necessary to provide the Services to SJPL as required by this Agreement. In the event that SJPL requests that MNW modify that design then SJPL shall be responsible for all costs and related charges associated with any such request and shall notify MNW in writing a minimum of 60 days prior to the requested modification date or as mutually agreed upon and signed by both parties. MNW shall only change the design referenced in Attachment A during down time as detailed in Section 3(d) and only in a manner that results in the equivalent or better service for SJPL.
- (e) Scalable Broadband Services. MNW's network may be expanded and capacity increased at any time during the term of this Agreement to meet SJPL's increased bandwidth requirements. SJPL shall request in writing the specific Service upgrades, MNW will provide a quote at time of request which must be signed by both parties before any expansion of this Agreement. As applicable, SJPL shall submit or work with MNW to submit to USAC any necessary filings including, without limitation, service substitution requests to obtain E-Rate funding approval for any requested Service upgrades or other changes to the Services provided under this Agreement. SJPL understands and agrees that it shall be responsible for the payment of all applicable fees, costs and related charges for and resulting from upgrades or changes to the Services regardless of whether E-Rate funding approval for the requested upgrades or changes is obtained.
- (f) Notice of Installation. MNW shall provide SJPL with prior written or electronic notice of the dates and times of when it intends to enter the Customer property. In addition, MNW shall be responsible for (i) ensuring that the installation of the Services or the Services them self do not infringe on or interrupt student activities and (ii) taking all appropriate safety measures, including fencing all construction areas, to ensure that SJPL District students, staff and other users are not at an increased risk for injury as a result of the installation of the Services or MNW's use of SJPL's property.
- (g) Restoration of Customer Property. Following the exercise by MNW of any access rights granted herein, certain construction requirements may alter or damage certain elements of the land including ruts, concrete cracks, spoils, etc. MNW shall repair and restore SJPL's property to a condition that is approved in writing by the designated representative of SJPL. If MNW does not restore the property to such a condition with 60 days after SJPL sends notice to MNW requesting repair, SJPL may restore the property and MNW shall reimburse SJPL for such costs within 15 days after SJPL sends a written invoice to MNW.

2. Ownership of Equipment

- (a) Ownership. All radio equipment that is deployed to provide service to SJPL will be owned by MNW.
- (b) SJPL Equipment. The equipment for which SJPL owned and maintained prior to accepting this contract will continue to be owned by SJPL.

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3. MNW Service Levels, Support, Maintenance and Indemnification

- (a) Availability Commitment. MNW shall use commercially reasonable efforts to maintain Services availability for SJPL 99.99% of the time. MNW shall not be responsible for a loss of service event attributable to any outage that is (i) is less than one (1) hour in duration, (ii) is attributable to MNW's scheduled network maintenance, (iii) is attributable to failure or outage of related telephone circuits (whether ordered by MNW or SJPL), (iv) results from SJPL's applications, equipment or facilities, (v) results from any act or omission of SJPL or any user of SJPL's equipment or account, or (vi) is due to or occasioned by any riots, wars, acts of enemies, national emergency, acts of vandalism, strikes, floods, fires, high winds, lightning, hurricanes, tornados, acts of God, or other or by any other cause not within the control of MNW that by the exercise of reasonable diligence MNW is unable to prevent, provided that MNW: (a) gives SJPL prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance, (vii) results from MNW not having been granted site access by the SJPL, or (viii) results from SJPL's unauthorized use of equipment or the Services. At SJPL's request, MNW shall calculate the Deficiency Credit for any calendar month. MNW shall credit to SJPL's account as a refund the Deficiency Credit upon written request by SJPL.
- (b) Latency Commitment. MNW's goal is for round-trip transmissions between designated end-points to average thirty-five (35) milliseconds or less except during Outage Events ("Latency Commitment"). The foregoing Latency Commitment is measured by averaging sample measurements taken during the Service Window between core backbone routers.
- (c) Bit-Error Rate Commitment. MNW's network bit-error rate between designated end-points shall average 10^{-3} or less each day except during Outage Events ("Bit Error Rate Commitment"). Bit Error Rate Commitment is measured by standard, industry-accepted methods and measured during the Service Window between designated end-points. Upon written request of SJPL, for each minute in the Service Window for which MNW fails to satisfy its Bit Error Rate Commitment during a calendar month, MNW shall refund the total number of bit error rate minutes divided by the total number of minutes during the Service Window in that month.
- (d) Reporting Commitment. MNW shall provide SJPL at least seven (7) days advance notice of scheduled outages for network maintenance. The standard weekly maintenance window is Monday through Sunday from 1:00 a.m. to 6:00 a.m. local time. Notice of other scheduled maintenance outages will be provided to SJPL's designated point of contact by telephone, e-mail, fax, or pager as elected by MNW.
- (e) Throughput or capacity measuring method. Both parties agree that the method used to measure throughput shall be by connecting a computer to a core switch, and at the remote endpoint connecting another computer, both utilizing the Jperf application. The test shall be performed using the TCP protocol, and the buffer length shall be set to 2 MBs. Each test shall be performed for no less than 15 secs from each endpoint. The actual measured results should compare within 15% to the throughput stated in the "Speed" column of Attachment A.
- (f) MNW Response Times. MNW shall provide a SJPL support service contact point. MNW shall respond by any reasonable method within four (4) hours to any SJPL notification, made to the specified contact point, of any failure of any Equipment to meet MNW's published specifications for the Services.
- (g) Safety. MNW acknowledges that the services provided to SJPL are of a mission critical nature and all reasonable efforts shall be made to restore service as quickly as possible. SJPL agrees that the final judgment of the safety of the working conditions at any time shall rest with the MNW field technicians.
- (h) Insurance. During the term of this Agreement, MNW, at its sole cost and expense, and for the benefit of the SJPL, shall carry and maintain, with companies and in forms reasonably satisfactory to SJPL, comprehensive general liability and property damage insurance, insuring against all liability of MNW arising out of installing and providing the Services, with a minimum combined single limit of Two Million (\$2,000,000.00) dollars per occurrence. Such policy shall name SJPL, its Board, Board members, employees, agents and successors as an additional insured and provide that it is primary to, and not contributing with, any policy carried by MNW covering the same loss with a waiver of subrogation in favor of SJPL. MNW shall provide SJPL with certificates of insurance and/or copies of policies reasonably acceptable to SJPL evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement. The failure to provide acceptable insurance shall be deemed a breach of this Agreement entitling SJPL to terminate this Agreement immediately. All policies of insurance shall provide by endorsement that no coverage may be canceled, terminated, or reduced by the insuring company without the insuring company having first given at least 30 days prior written notice to SJPL.

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4. SJPL'S Obligations.

(a) Payment

- i. *Monthly Service Fee.* MNW shall invoice SJPL each month in advance for the Monthly Service Fee as shown in Attachment A. SJPL shall pay such monthly invoices in full, without setoff or reduction, by the due dates listed on the invoices.
- ii. *Taxes.* SJPL is a tax exempt organization. Federal excise tax does not apply to SJPL and State of Indiana Sales Tax does not apply. The amounts to be paid to MNW hereunder are inclusive of all other taxes that may be levied, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the Services. MNW shall be responsible for any taxes levied or imposed upon the income or business privileges of MNW and personal property taxes on MNW owned and provided equipment which shall be paid for by MNW.
- iii. *E-Rate Discounts.* SJPL shall be responsible for payment to MNW of the total cost of Services as invoiced monthly by MNW. If SJPL is obtaining discounted services from MNW through the E-Rate program, SJPL may elect to have MNW invoice SJPL for only the non-discount portion of the Services. SJPL shall notify MNW, prior to the start of Services, whether it wishes to be invoiced for the full amount or only the non-discounted amount of the Services. If SJPL wishes to change the invoicing method, it must notify MNW in writing at least sixty (60) days in advance of the requested change date.
- iv. *USAC Invoicing.* SJPL shall cooperate with MNW to timely submit any filings required to ensure that MNW is able to (1) submit invoices to USAC for E-Rate funding support applicable to the Services, and (2) receive timely payments from USAC for the discounted portion of the Services.

(b) E-Rate Compliance

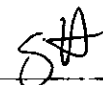
- i. *Compliance with Program Rules.* To the extent that E-Rate support is utilized to obtain Services, SJPL agrees to submit all necessary filings, take all necessary actions, and refrain from taking prohibited actions to ensure that it remains in compliance with E-Rate program requirements. If SJPL's actions or failure to act, in any manner whatsoever, causes it to no longer qualify for E-Rate support, SJPL shall be solely and fully responsible for full payment of the undiscounted cost of the Services being provided pursuant to E-Rate discounts.
- ii. *Prohibition on Resale.* SJPL shall not sell, resell or transfer for consideration, unless specifically authorized to do so under E-Rate program requirements, any Services that are provided by MNW to SJPL at a discount under the E-Rate program.
- iii. *Recordkeeping.* SJPL shall retain all documents related to its application for E-Rate support and compliance with E-Rate requirements for the minimum period of time required under the E-Rate program regulations. SJPL agrees to provide any such documentation related to MNW's Services for inspection upon MNW's reasonable written request.

5. SJPL'S Warranties, Representations and Indemnification.

- (a) Warranties and Representations. SJPL warrants and represents that SJPL shall use the Services only for the originally intended purpose(s), in accordance with this Agreement, and all applicable laws, and SJPL shall make all payments required herein plus any and all applicable Taxes. To the extent that E-Rate support is utilized to obtain Services, SJPL warrants and represents that it has complied with all applicable requirements of the E-Rate program.
- (b) Party Indemnification. Each party hereby agrees to indemnify and hold harmless the other party with respect to any third-party claims, demands, or action arising from this service Agreement to the extent that the indemnifying party's negligent or wrongful acts or omissions give rise to said third-party claims, demands or actions. Such indemnification hereunder shall include, but shall not be limited to, disputes related to the FCC or any State Public Utilities Commission rules. Indemnification hereunder shall cover, but is not limited to, costs and attorney fees incident to any of the foregoing.
- (c) No Consequential Damages. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER PARTY SHALL BE HELD RESPONSIBLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER FORMS OF INDIRECT DAMAGES INCURRED BY REASON OF A BREACH OF OR THE EXPIRATION OR TERMINATION OF THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION HEREUNDER OR FOR ANY OTHER REASON, REGARDLESS OF WHETHER SUCH INDIRECT DAMAGES ARISE IN CONNECTION WITH A CAUSE OF ACTION PURSUANT TO A CONTRACTUAL BREACH, TORTIOUS CONDUCT OR OTHERWISE.

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6. Contact Us.

- (a) Notices. All notices, invoices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given only if and when: (i) personally delivered (including by means of a messenger service), or (ii) by United States first class mail postage prepaid (registered or certified) return receipt requested, or (iii) when delivered (and receipted for) by an overnight delivery service, in each case addressed to the address set forth in the first paragraph of this Agreement.

7. Term and Termination.

- (a) Services Term of Agreement. The initial term of Services under this Agreement (the "Term") shall begin when the Services commence and, unless earlier terminated as hereinafter provided, shall expire on the last day of the forty-eighth (48th) month depending on start of service date, succeeding Service commencement ("Expiration Date"). This agreement will replace the existing agreement in place for WAN services.
- (b) Termination by SJPL. If MNW repeatedly and persistently fails to substantially provide the Services as required by the terms of this Agreement, SJPL may terminate this Agreement by written notice to MNW. SJPL shall give MNW thirty (30) days written notice of such intention to terminate and an opportunity to cure any such default. In the event that MNW commences to cure and diligently pursues cure during that thirty (30) day period, then SJPL may not terminate this Agreement.
- (c) Termination by MNW. If SJPL breaches this Agreement, and following a minimum thirty (30) day written notice to SJPL, MNW reserves the right in its discretion to suspend or terminate this Agreement and to disconnect the Services, in whole or in part, with just cause as provided for by this Agreement, and providing the cause has been fully declared to SJPL, allowing SJPL ninety (90) days to cure said cause.

8. Governing Law. This Agreement shall be governed by the laws of the State of Indiana without regard to its conflict of laws principles.

9. Miscellaneous.

- (a) Entire Telecommunications Service Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof and may be amended or modified solely by written agreement signed by each of the parties hereto.
- (b) No Third Party Beneficiaries. This Agreement is not intended to confer and does not confer any rights or remedies upon any person or entity other than the parties to this Agreement and the MNW Indemnified Parties.
- (c) Severability. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining portions shall remain in full force and effect.
- (d) Assignment. Neither party may assign this Agreement without receiving the written approval from the other party.
- (e) Attorney Fees. In the event any action or proceeding is brought by either party against the other party under this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable costs and attorney's fees incurred in such action or proceeding, including any such fees and costs of appeal.
- (e) SJPL Contact. SJPL shall designate a Representative who shall have the authority to represent and bind SJPL in all of its dealings with MNW, and shall serve as a contact person in the event that MNW needs to contact SJPL for any reason. Representative's contact information is as follows:

Name:

Title:

Address:

Telephone:

Facsimile:

E-mail

Sarah Hill
Director of Technology & Collections
304 S. Main St
South Bend, IN 46601
574-282-4619
s.hill@sjcpl.org

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- (f) Replacement of SJPL Representative. In the event that SJPL replaces Representative, it shall appoint a new Representative and provide MNW written notice of such change and the new Representative's contact information within five (5) days.
- (g) Counterparts. This Agreement may be executed in separate original counterparts, each of which is deemed to be an original and all of which taken together shall constitute one and the same Agreement.

10. Communication Towers

- (a) Ownership. Communication towers constructed for the provisioning of services in attachment A are owned by MNW.

MAINTENANCE

1. MNW Obligations.

- (a) Maintenance and Repairs. During the term of this Agreement, and any renewal or extensions thereof, MNW shall, at its sole cost and expense, keep in good working order, condition, and repair the microwave equipment and all component parts thereof including electronics and transmission equipment, it being understood that SJPL shall not be responsible for the making of any improvements, maintenance, and/or repairs of any type, kind, or nature whatsoever upon MNW supplied equipment or any component part thereof except the SJPL supplied equipment. MNW will at its own expense inspect the system bi-annually during the life of this agreement.
- (b) Background Checks MNW, at its sole cost, shall conduct background investigations of all MNW employees, contractors, agents or others who will interact in proximity to SJPL's students.
- (c) Hold Harmless. MNW shall defend, hold harmless and indemnify SJPL against any claims, costs, losses, damages or amounts paid in settlement as a result of any claim or threat of claim brought by a third party against SJPL to the extent based on an allegation that: (i) MNW products infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) a defective MNW product directly caused death or personal injury; provided that SJPL did not alter, modify, or otherwise change the MNW product that gave rise to such claim. If SJPL's use of the MNW products is restricted as the result of a claim of infringement, MNW shall pursue one of the following: (i) substitute other equally suitable MNW product; (ii) modify the allegedly infringing MNW product to avoid the infringement; (iii) procure for SJPL the right to continue to use such MNW product free of the restrictions caused by the infringement; or (iv) take back such MNW product and refund to SJPL the license or other fee previously paid for such MNW product depreciated on a straight line basis over twelve (12) months and terminate SJPL's license to use such MNW product.

2. SJPL Obligations.

- (a) Network Monitoring. During the term of this Agreement, and any renewal or extensions thereof, SJPL shall, at its sole cost and expense, monitor the network twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") and provide notifications to MNW of outages, SNMP traps and error conditions as mutually agreed upon.
- (b) Remote Access. During the term of this Agreement, and any renewal or extensions thereof, SJPL shall, at its sole cost and expense, provide remote VPN Access twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") to MNW for the sole purpose of diagnosing and monitoring the microwave data network.
- (c) Electrical Power. During the term of this Agreement, and any renewal or extensions thereof, SJPL shall, at its sole cost and expense, provide 110 volt AC electrical service twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") to MNW supplied equipment for the sole purpose of providing network services to SJPL.
- (d) Financial Reporting. SJPL agrees to provide MNW financial reports needed by MNW to secure funding for the network hardware.
- (e) Maintenance and Repairs of SJPL owned Equipment. During the term of this Agreement, and any renewal or extensions thereof, SJPL shall, at its sole cost and expense, keep in good working order, condition, and repair the equipment and related infrastructure required for network connectivity, it being understood that MNW

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shall not be responsible for the making of any improvements, maintenance, and/or repairs of any type, kind, or nature whatsoever upon the items contained within that list. Any such work shall be billable at MNW's standard hourly rates. Replacement components and parts will be provided by MNW to SJPL at or below retail pricing. SJPL shall be responsible for providing and provisioning suitable network connection points at each end of the link to accommodate the traffic capacity being provided.

- (f) IP Addresses and Network Management Ports SJPL shall provide to MNW sufficient IP Addresses and network interface ports for interconnecting devices and network management purposes.

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ATTACHMENT A

Narrative Description: Provide 5Gbps of Internet Access coming into the main branch (304 S. Main St. South Bend, IN). MNW Telecom will be feeding the internet over our existing MetroNet circuit without adding a new fiber drop.

Commencement Date: July 1, 2017

Term: 48 Months

Service Expiration for all sites: 6/30/2021

Service Descriptions & Pricing				
Internet Access Entry Location		Speed	Contract Start Date	Contract End Date
304 So Main St, South Bend, IN		5Gbps	7/1/2017	6/30/2021
TOTAL MRC 48 MONTHS:			\$ 2,900.00	

SJPL will (Check one)

Pay 100% of the MRC and seek reimbursement from USAC

Pay discounted portion of the MRC and assist MNW Telecom in collecting balance from USAC

MNW TELECOM INC.

By: _____

Name _____

Title _____

St. Joseph County Public Library

By: Sarah Hill

Name Sarah Hill

Title Director of Technology and Collections

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